

REMARKS

The present Amendment is in response to the Office Action dated August 9, 2005 in reference to the above-identified application. The Examiner set a shortened statutory period for reply of three (3) months, making the present Amendment due by November 9, 2005. Filed concurrently herewith is a request for a three-month extension of time so that the present Amendment is due by February 9, 2006.

In that Office Action, the Examiner noted that the Applicant mistakenly requested that the second full paragraph on page 11 be amended when in fact the first full paragraph was being amended. Accordingly, Applicant requests that the first full paragraph of page 11 be amended. In addition, the Examiner pointed out that "figure 9" in the second full paragraph of page 12 should read "figure 10." Applicant requests that the specification be amended accordingly. Also, an informality in claim 14 was noted by the Examiner. Claim 14 has been amended to replace "member" with "portion." Finally, new claim 36 has been added to the application.

Turning to the substantive rejections, claims 1-7, 10, 12-15, 18-21, 24, 30, 31, and 33 have been rejected as being anticipated under 35 U.S.C. §102(b) over U.S. Patent No. 6,055,832 to Wyers. The remaining claims have been rejected as obvious under 35 U.S.C. §103(a) over Wyers in combination with one or more other cited references, including U.S. Patent No. 6,209,369 to Freck, U.S. Patent No. 6,508,086 to Chen, U.S. Patent No. 4,226,100 to Hampton et al, U.S. Application No. 2002/0108407 to Zapushek, U.S. Patent No. 5,156,029 to Heald, and U.S. Patent No. 6,467,316 to Chen.

Claims 1, 18, 30 and newly presented claim 36 each recite a "head cover" that is operative "to engage said locking head." The Examiner contends that Wyers '832 discloses a head cover that engages the locking head. Applicant respectfully

disagrees with the Examiner's reading of Wyers '832. Wyers '832 does indeed disclose a locking head 40 (figure 2). However, as disclosed in the specification "locking head 40 includes a housing 42" that houses outer sleeve 78, sleeve 90, and parallel arms 100. (Wyers '832 specification: col. 6, lines 7, 36, 57; col. 7, line 4). The Examiner contends that housing 42 is the head cover. It is nonsensical to argue that housing 42 is the head cover that is operative to engage and cover itself.

Furthermore, In the present application it is noted that, "the structure of locking head 40 is again the same as that described in [the Applicant's] U.S. Patent No. 6,055,832." (page 10, line 24). It follows then, that the locking head in both cases is the same, however in the present application the claims recite the addition of a "head cover" 80 shown, for example, in figures 4-12, that covers the locking head. Wyers '832 does not disclose such a cover. In order for a claim to be anticipated under 35 U.S.C. §102 all of the elements in the claim must be disclosed in the applied reference. Wyers '832 does not even remotely disclose a locking head cover and therefore claims 1, 18, 30, and all claims depending therefrom should be allowed as well as newly presented claim 36.

The Examiner has rejected Claims 1, 18, and 30 among others as being obvious over Zapushek in view of Hampton et. al. or Heald. Assuming arguendo that combining Hampton or Heald with Zapushek would yield all of the claim limitations recited in the claims, there is still no motivation to combine Zapushek with either Hampton et al. or Heald. A prima facie case of obviousness cannot be established without a basis for combining or modifying the applied references. (M.P.E.P. §2143.01). There is no motivation to combine Zapushek with Hampton or Heald because Zapushek already provides a seal in the form of O-ring 120. To suggest that it is obvious to combine these references assumes that the Zapushek design is

flawed. There is no such suggestion in the applied references. The only suggestion to replace the O-ring seal with a "cover portion operative to engage the locking head" with a "surrounding flange edge with an associated seal structure" is found in the present application (claims 1, 18, 30, and 36). When the only suggestion to combine the teachings of the applied references in the manner proposed by the Examiner is found in the hindsight accorded one who first views the Applicant's disclosure, an obviousness rejection under 35 U.S.C. §103 is improper. See *In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). The Examiner has failed to establish a prima facie case of obviousness and therefore claims 1, 18, 30 and all claims depending therefrom should be allowed as well as newly presented claim 36.

Even if one were to combine Zapushek with either Hampton or Heald, the combination does not teach all of the limitations as recited in, for instance, claims 1, 3, 18, 20, 30, and 36. A *prima facie* case of obviousness requires that the prior art reference (or references when combined) teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991); *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974); *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) ("All words in a claim must be considered in judging patentability of that claim against the prior art."); MPEP §2143.03.

Hampton's protective cover 26 is inoperative to seal the locking head as is apparent in figures 2-6. In these figures shackle-receiving openings 40 are oversized. (Hampton: col 3, line 6). Instead seals 32 or 34N are used to seal the head. Therefore, in order to seal the head as suggested by the Examiner the combination of Zapushek with Hampton would result in fitting a tubular sleeve 34 (Hampton) on Zapushek's shackle 26, with O-rings 32 (Hampton) disposed on both

ends of the tubular sleeve. This combination does not contain the limitations recited in the claims. For example claims 1, 18, 30, and 36 recite a "head cover" that is operative "to engage said locking head" with a "surrounding flange edge with an associated seal structure." The above combination does not cover even a portion of the locking head, does not engage the locking head, and does not have a surrounding flange edge. Accordingly, the Examiner has not established a prima facie case of obviousness because, in addition to failing to provide a motivation for combining the references, the references also fail to teach all of the limitations in at least claims 1, 18, 30, and 36. It follows that claims 1, 18, 30, 36 and all claims depending therefrom should be allowed.

The combination of Zapushek with Heald also fails to include all of the limitations as recited in claims 1, 18, 30 and 36. Specifically, these claims recite that the cover portion "engages said locking head." If flaps 76 are analogous to the flange seal then horizontal portion 68 must be analogous to the flange portion. It is clear then from figures 3 and 4 and is explained at column 3, lines 40-44, that the cap 58 is engaged with the cover 30 and not engaged with the lock head as is the recitation in claims 1, 18, 30, and 36. Claim 36 further recites that the head cover skirt is operative to "mechanically engage at least some of the peripheral head surface" and that the flange extends in "confronting relationship" with the inner head face. The combination of Zapushek and Heald does not teach a mechanical engagement with the locking head nor does it teach that the flange portion is in confronting relationship with a face of the lock head. Accordingly, the Examiner has not established a prima facie case of obviousness because, in addition to failing to provide a motivation for combining the references, the references also fail to teach

all of the limitations in at least claims 1, 18, 30, and 36. It follows that claims 1, 18, 30, 36 and all claims depending therefrom should be allowed.

Finally, even if one were to combine the applied references without motivation, all of the limitations of claims 3 and 20 are not disclosed. For instance, combining Zapushek with Heald would result in a device that provides access to the keyhole via slit 48 formed by lower parts 44 and 46. Claims 3 and 20 recite a "cap member movable between an open position permitting access to the keyway and a closed position wherein said cap member prohibits access to the keyway." Slit 48 is not a cap member and therefore the limitation of a cap member is not present in the combination of Zapushek with Heald. Again the applied references fail to provide a motivation for combining the references and the references fail to teach all of the limitations in at least claims 3 and 20. It follows then that claims 3, 20, and all claims depending therefrom should be allowed.

Based on the foregoing and with all due respect to the Examiner's initial reading of the applied references, Applicant submits that the present application is in complete condition for allowance. Action to that end is courteously solicited. If any issues remain to be resolved prior to the granting of this application, the Examiner is requested to contact the undersigned attorney or agent for the Applicant at the telephone number listed below.

Due to this Amendment, a new filing fee calculation is provided, as follows:

Maximum Total Claims This Amendment		Total Claims Previously Paid For	
36	-	35	= 1 x \$ 25.00 = \$25.00
Total Independent Claims Per This Amendment		Maximum Independent Claims Previously Paid For	
4	-	3	= 1 x \$100.00 = \$100.00
Additional Filing Fee Due			\$125.00

Accordingly, the Commissioner is hereby authorized to charge \$ 125.00 to Deposit Account 13-1940 for the claim amendments. Furthermore, The Commissioner is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account No. 13-1940.

Respectfully submitted,

Martin & Henson, P.C.

By: 

Timothy J. Martin, #28,640

Michael R. Henson, #39,222

John W. Carpenter, #57,830

9250 West 5th Avenue, Suite 200

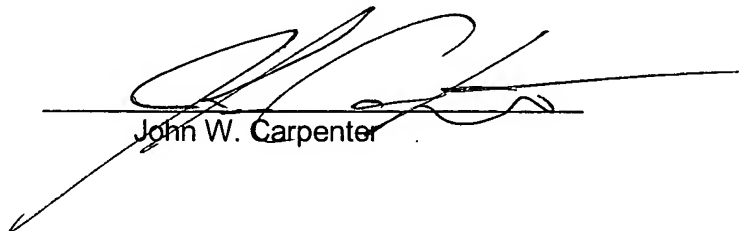
Lakewood, Colorado 80226

(303) 232-3388



CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8

I hereby certify that the foregoing **AMENDMENT (17 pages) and REQUEST FOR A THREE-MONTH EXTENSION OF TIME (2 pages)** is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Mail Stop Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 9th day of February, 2006.



John W. Carpenter